

APPROVED 10/15/03

TOWN OF WESTFORD

ZONING BOARD OF APPEALS

MINUTES

DATE: September 17, 2003

TIME: 7:40 P.M.

PLACE: Westford Academy Lecture Hall

PRESENT: Sam Frank, Ron Johnson, Roger Hall, Bob Herrmann,
Dave Earl-arrived at 8:40 and left at 10:05; Jay Enis-arrived at 7:50;
Jim Kazeniac

OTHERS

PRESENT: Jennifer Burke-Permitting Office Manager;
Ellen Callahan Doucette-Town Counsel;
Norman Khumalo-Assistant Town Manager;
Audience Members

VARIANCE – 30 LOWELL ROAD

Seeking a Variance from Appendix C Table of Dimensional and Density Regulations to allow the removal of an existing 24'x21' garage and the construction of a 32'x30' barn in the same location within the front yard setback in a Residential A District, Assessor's Map 32, Parcel 15, Michael Boyle

Continued from the meeting of August 23, 2003. Michael Boyle was present seeking a Variance to allow for the removal of an existing 24'x21' garage and the construction of a 32'x30' barn in the same location. Boyle presented plans showing the dimension of the barn and the location in proximity to the existing house. There was no input from the floor. Frank read into the record letters of support from abutters Lori Parente, 7 Meadowview Lane; Maria Minaee, 3 Meadowview Lane; Terese Heslin, 32 Lowell Road; Marguerite Lynady, 32A Lowell Road; Ronald Sousa, 23 Lowell Road; and Carol Engel, 26 Lowell Road. **It was moved by Johnson, seconded by Hall, and VOTED 6 IN FAVOR WITH 1 ABSENT (Earl), to close the public hearing.** The Board added the following

conditions: The changed plan will be filed with the Town; the change will constitute the matching of the pitch of the front of the barn with the pitch of the main house; there will be no cooking, bathroom or sleeping facilities in the barn; and the barn will be no closer than 34 feet from Lowell Road and 39 feet from Meadowview Lane. **The Board VOTED 5 IN FAVOR with 1 NOT VOTING (Enis) and 1 ABSENT (Earl), to grant the Variance as conditioned above.**

VARIANCE – 1 PLAIN ROAD

Seeking a Variance from Appendix A Table of Use Regulations Section C, subsections 2, 3 & 4 and a Special Permit from Section 3.6.2 Nonconforming Uses to allow the continued operation of a Farm Stand in a Residential A District, Assessor's Map 63, Parcel 29, Deborah Fletcher

George and Deborah Fletcher were present seeking a Variance and a Special Permit to allow for the continued operation of a Farm Stand in a Residential A District. George Fletcher stated that he lost 15 acres of land this year to development and that it is becoming more difficult to abide by the State law that they are governed by. Fletcher requested permission to continue with his business as presently conducted. Fletcher stated that they would like to subdivide the lot. Fletcher stated that there are no changes proposed to the existing business. Frank noted that the map given to the Board did not have the demarcation relative to subdividing the lot. Frank stated that the Board needed dimensional information before making a decision. Fletcher stated that the stand and the house would be approximately one (1) acre and the remainder would be approximately five (5) acres. Doucette recommended that the applicant speak to the Building Inspector for review of the plans. John Hess, 19 Almeria Circle, expressed concerns regarding reducing any provisions relative to the farm stand, i.e., 5 acre requirement. Hess felt that a farm stand is a retail operation and that the 5 acre requirement provides a buffer zone to the abutters. Hess stated that the abutters were concerned that the operation may become a commercial retail space which is not allowed under Residential A zone. Hess stated that the abutters were also concerned with traffic, public safety and whether the agricultural use was appropriate for that area. Hess provided a petition to the Board signed by 5 abutters. Deborah Fletcher stated that the farm stand could increase under the State law by using the land in the rear. Mrs. Fletcher stated that it was not their intention to increase the business. Fletcher asked to withdraw the petition without prejudice. **It was moved by Herrmann, seconded by Johnson, and VOTED 5 IN FAVOR WITH 1 NOT VOTING (Kazeniak) and 1 ABSENT (Earl), to allow the Petitioners to withdraw the petition without prejudice with no further application filing fee if it is re-filed.**

99 MAIN STREET DISCUSSION – ROSEGATE, LLC

Board to Review 4th Draft Decision and Deliberate

Doucette informed the Board that the public hearing was closed and that no new information can be provided to the Board. Frank read draft Conditions 31, 32, and 33 relative to the Conservation Commission and the Board of Health. Eric Fahle, Chairman of the Conservation Commission, was present. Fahle reported that the public hearing with the Conservation Commission is still open and that the Commission continues to have issues relative to the proximity of the State certified vernal pool in relation to the septic system. Fahle referenced his letter dated August 8, 2003 to the Zoning Board in which the Commission did not recommend that requirements be waived for this project. Frank updated the Board on the status of the comprehensive permit application process, the requested waivers and the Board's suggestion to the Applicant to consider ten units rather than twelve units; or provide funds for affordable housing purposes. The Board reviewed the fourth draft of the Findings and Decision dated September 16, 2003.

Frank suggested the following language be added to #8 of the FINDINGS: *Per the application to the State the uplands consist of roughly 1.4 acres and the wetlands are approximately .43 acres. There is a vernal pool directly across Main Street from the Property. The .43 acres of wetlands are at the back of the lot.*

Frank suggested revising the language in #17 of the FINDINGS: ..., the Board concluded that the appropriate density for the site is ten (10) units, or, in this case, *seven* units per buildable acre.

Frank suggested the following language be added to #17 of the FINDINGS: *The reduction in the units are the Boards' conclusions relative to unit reduction also flow partly from wanting additional safety factors on the wastewater and stormwater loads on the lot as well as from creating an excessive impact on the character of the residential neighborhood and as well as concern about adjacent septic systems.*

Burke reported that she spoke to Chris Pude, Director of the Westford Housing Authority. Pude requested adding language to Condition #4: Preference for the sale of ...*(c) graduates of Westford Academy or Nashoba Valley Regional Technical High School; and/or (d) Westford town employees.* Kazeniac suggested revising (c) as follows: *Westford graduates of Westford Academy or Nashoba...*

Herrmann requested that Burke provide the Board with a list of the requested waivers for the next meeting.

Earl suggested adding a FINDING regarding additional green space. Earl to provide appropriate language to Burke.

Frank suggested adding language to FINDING #16 or #17: *The Board believes the project is economic with ten (10) units, the additional three bedroom units and the 80% income criterion.*

Frank suggested removing from Condition #5(b) the words "lot or".

Frank suggested adding language to Condition #5(c): Units owner's association fees for the Affordable Units shall be established as a percentage of the same fees for the *comparable* market rate units.

This matter was continued to Wednesday, September 24, 2003 at 7:00 p.m.

137 CONCORD ROAD, COMPREHENSIVE PERMIT CONTINUED,
CONCORD PLACE, LLC

Attorney Douglas Deschenes was present for the applicant. Deschenes stated that they are waiting for a response back from the Town Engineer peer review. Deschenes reported that the plans were presented informally to the Planning Board on Monday, September 15, 2003. Deschenes referenced his letter dated September 11, 2003 regarding lofts and the impact on sales prices and marketing. Deschenes stated that he also submitted a ten (10) unit proforma and an analysis of 8 vs. 10 unit projects. Deschenes has provided the escrow money for the peer reviews. Deschenes reported that the locus plan showing the surrounding structures and wells is currently being prepared. The final septic design should be completed within the next few days. Deschenes stated that the applicant is currently weighing the cost of providing the isometric drawings. Deschenes outlined the site, septic and architectural plans.

Review Department Comments: Planning, Fire, Board of Health, Engineering

Frank read into the record the following items:

Letter dated August 20, 2003 from Patricia Montminy, 135 Concord Road.

Letter dated September 11, 2003 from Attorney Douglas Deschenes.

Letter dated September 11, 2003 from Gordon M. Stevenson, 134 Concord Road. Part of Stevenson's letter indicated "Rule 10 of the Town of Westford Board of Appeals Rules and Regulations Applicable to Comprehensive Permit Application under...MGL 40B...stipulates that other boards, commissions, and agencies will not only be asked to comment on the application, but will also be requested to attend the ZBA hearing. Nowhere does the rule give the ZBA discretionary

authority not to request attendance." Earl asked Burke to review Rule 10 of the Board of Appeals Rules and Regulations for a clarification.

Letter dated September 11, 2003 from the Town Engineering Department.

Letter dated September 11, 2003 from Board of Health.

Letter dated September 11, 2003 from Fire Prevention Officer.

Deschenes commented on the various correspondence items. Deschenes reported that the Board of Health will be getting the septic plans in the near future. Deschenes stated that the applicant is aware of the well and will address that matter in accordance with Title 5 regulations, and any other wells that may be located. Deschenes stated that he appreciated the Board of Health's comments that if people are going to say that they have drinking water wells that need to be protected, there are certain requirements and obligations that they must meet with respect to those wells in terms of having town water and having a private well. Deschenes stated that they will be asking those neighbors to address that for the Board as well. Deschenes pointed out that there is town water in that area and that to the best of his knowledge the neighbors are connected to town water.

Deschenes stated that the applicant's engineers will be responding to the Town Engineer's comments.

Deschenes stated that they will be meeting with the Fire Prevention Officer to ask him to identify where he would like the fire hydrants to be located. As part of that meeting, Deschenes will be discussing circulation issues, etc.

Deschenes stated that much of what is in the neighbors' correspondence has been addressed or have been talked about and needs to be addressed. Deschenes disagreed with the statement relative to whatever waiver list given to the Board during the application process cannot be changed. Deschenes stated that things change during the process including the waiver list. Deschenes stated that he has seen nothing in the law that prohibits the give and take and working together.

Deschenes suggested meeting with the Building Inspector regarding the legality of the lofts and letting the Building Inspector make a determination as to whether the lofts are considered bedrooms. Deschenes stated that the Board of Health could also make a review of that issue. Deschenes stated that they would stand by and deal with the determination accordingly. Deschenes stated that if the Building Inspector and the Board of Health do not consider the lofts as bedrooms, the applicant will be asking the ZBA to also consider the lofts the same. Burke reported that both the Building Inspector and the Interim Director of Environmental Services told her that the lofts would not be

considered bedrooms under State regulations. Frank asked Burke to get written comments and an explanation of the State regulations and how it does not apply in this case from the Building Inspector and the Interim Director of Environmental Services.

Burke also reported that Bill Turner, Conservation Administrator, received a copy of the plans and told Burke that it is outside the jurisdiction of the Conservation Commission and therefore he had no comment. Burke to ask Turner for a letter confirming that the Commission has no jurisdiction regarding this project.

Comments from the Board –Concord Place

Kazeniac asked Burke to send a letter to the Westford Water Department for information regarding the drinking water capacity in the area and whether they are authorized to inspect separate water systems. Deschenes stated that the Board of Health's letter quotes from the Town of Westford Local Water Supply Regulations. Johnson asked if a survey could be done of the neighborhood to see who is or is not a public water taker.

Comments from the Public – Concord Place

Mark Birch, 6 Tallard Road, was concerned with the determination of the 100 feet from the wetlands. Birch believed that his property abuts the property on one corner (to the stonewall on the side of the hill). Birch asked that the 100 feet from the wetlands be verified. Birch stated that all of Tallard Road, with the exception of one house, has well water. Birch gave Deschenes permission to look at his well which is almost in the wetlands. Birch stated that there is an easement on his property from the Town for the wetlands and that the Town has not been taking care of the easement. Birch pointed out that there is standing water beyond his lawn but on his property and any additional water will cause flooding and kill the trees. Birch asked that the drainage be looked at very clearly so that no additional water is added to the wetlands. Birch invited everyone to visit his property and look at the wetlands. Deschenes stated that the expanded locus map will show abutters' properties and the surrounding areas. Deschenes stated that the applicant's surveyors located the closest point of the wetlands.

Dennis Galvin, 90 Concord Road, stated that the Board needed to look at the concept of the ten units, the policy and the commonsense approach to the project. Galvin stated that the petitioner is now saying that they reduced the number of units from 16 to 10. Galvin cautioned the Board that when evaluating that not to get caught up in an illusion of progress. Galvin stated that he doubted that the 16 unit original plan was actually a realistic figure to begin with in the first place. Galvin suggested that the Board use 8 units to 1 buildable acre as a benchmark like the Board used when approving the Rose

Garden development in the past. Galvin reiterated that he was not opposed to affordable housing but felt that Chapter 40B does not accomplish what it was intended to accomplish. Galvin felt that all the area towns are having problems with Chapter 40B because it is overriding reasonable zoning restrictions under the guise of trying to bring affordable housing. Galvin felt that the creation of affordable housing under Chapter 40B was minimal. Galvin asked the Board to look at the density of the site and what is being created for a living environment at that density. Galvin stated that there are still safety factors and septic system problems.

Al Hicks, 130 Concord Road, stated that he would write out his questions regarding the proforma. Frank stated that the Board would provide Hicks' questions to the analyst. Frank suggested that the analyst also look at both 10 and 8 unit proformas. Hicks was concerned that the lofts would be used as bedrooms and would impact the septic system. Hicks suggested the applicant consider two buildings which would be more economic.

Herrmann felt that 10 units was too many for this site and suggested that the applicant look at reducing the density. Hall agreed with Herrmann's comments regarding density. Hall felt that any units over 8 on the less than 1 acre parcel is too many. Hall stated that at this point he would not support anything over 8 units.

Mark Birch, 6 Tallard Road, stated that the Board pushed for 10 units at Rosegate on 1.4 acres. Birch stated that if the Board used the same formula this project would have 6 units. Birch stated that if the Board was going to have a standard, it would need to be universal. Deschenes disagreed with the idea that the Board can standardize what should or should not be allowed across the board. Deschenes felt that every project needs to be looked at individually, i.e., wetlands, vernal pools, neighborhood characteristics, site access, etc.

Gordon Stevenson, 134 Concord Road, referenced the Zoning Board of Appeals Rules and Regulations. Stevenson read one of the rules: That the list of requested exemptions to the Town codes be submitted and the Board shall not accept evidence or allow for relief from any provision not specified. Burke clarified that the rule means that if a waiver request is not listed before the public hearing is closed then the Board cannot act on it. Stevenson felt that the Board was obligated to invite other boards to attend the ZBA hearings. Herrmann stated that the Board has always invited other boards to the meetings and/or to provide comments. Stevenson felt that the boards should provide comments and attend the meetings. Frank agreed that communication between boards needs to be improved. Frank stated that the intent of the regulation is to establish communication and get input from the other boards. Stevenson stated that he looked at the existing structure on the site which is a low building sitting on a knoll. Stevenson felt that a 2½ story building will soar over the neighborhood.

Westford Zoning Board of Appeals – September 17, 2003

Page 8

Attorney Eileen Ordnung, P.O. Box 302, Sterling, Massachusetts, representing Patricia Wagner-Montminy, submitted a letter to the Board from Wagner-Montminy, which expresses her objections to the project regarding the proximity, density, drinking water well, drainage, and the septic system. Ordnung also submitted documentation regarding an inspection on the well by a Title 5 Inspector. Ordnung stated that Wagner-Montminy will be providing a written statement regarding concerns with the proforma.

Frank Kilroy, 132 Concord Road, stated that he has a well and town water. Kilroy asked if the public hearing would be closed before the applicant provided all the necessary information. Frank explained that the Town's engineers will review the plans and there will be off-line meetings with the engineers, the applicant and a representative of the Zoning Board to go over the technical comments of the Town's consultants. The applicant will make adjustments to the plans according to the comments. A summary of what has been happening relative to the septic, groundwater management system, architectural review, the proforma, and any hydrogeologic that is required, will be given during the public hearing process. The public will be able to comment at the public hearings. The current plans are available for review at town hall.

Paul Berry, 138 Concord Road, asked if a noise level plan will be prepared. Berry felt that the noise from Route 495 would make the units very undesirable. Frank stated that noise from Route 495 would be the risks of the seller and the buyer.

MOTION TO CONTINUE THE PUBLIC HEARING – CONCORD PLACE

It was moved by Johnson, seconded by Hall, and VOTED 6 IN FAVOR WITH 1 ABSENT (Earl), to continue the public hearing to October 15, 2003 at 7:30 p.m.

UPDATE ON 211 GROTON ROAD, RANCHOS DE AMIGOS

Burke reported that the Town received a submittal on September 16, 2003 from the applicant for a Comprehensive Permit Application. Burke stated that the application has been scheduled for the meeting of October 15, 2003. Khumalo updated the Board on the LIP project for the Ranchos De Amigos site at 211 Groton Road. Khumalo reported that the Selectmen voted on September 8, 2003 to allow the applicant to submit an application to the Zoning Board of Appeals. Khumalo also reported that the Selectmen asked the applicant to attend a work session in which the Selectmen will review the designs of the site. Any substantial comments from that meeting will be provided to the Zoning Board. The applicant has agreed to pay for the participation of John Winslow relative to the review of the architectural design. A meeting has been scheduled for Friday, September 19, 2003 to discuss design issues. Khumalo stated that the Town has been working with the applicant to improve the design. Khumalo stated that the Town has concerns regarding the massing, scaling and view of the back of the units from Route 40. The Town has received complaints from abutters in the north and south of the site with the same concerns. Johnson asked why the Selectmen are involved in the

Westford Zoning Board of Appeals – September 17, 2003

Page 9

architecture and the massing and scaling when it is the Zoning Board that issues the Comprehensive Permit and makes decisions as to scale of the project, etc. Khumalo stated that approximately four months ago he and the Town Planner circulated a draft LIP process to the Boards which was prepared by the Affordable Housing Committee. The Board did not recall receiving the LIP process documentation. Burke to distribute the policy to the Board. Khumalo stated that the Selectmen are co-applicants in this project and they signed a Development Agreement with the developer specifying actions that the developer needed to take in conjunction with the Selectmen. Khumalo stated that one of those issues was prior to submitting to the ZBA the Selectmen had to agree to the site design and design of the structures. Johnson stated that since the ZBA makes the decision it would be helpful if the Selectmen involve the ZBA in the discussions. Khumalo stated that there will be problems for the Town if the ZBA reviews information regarding a project before the formal submission to the ZBA. Herrmann stated that the Selectmen need to understand that if they develop some design before it is filed, it is not necessarily the final design. Khumalo stated that in the Development Agreement the Selectmen made it clear that if there is substantial opposition to this project from the ZBA the Selectmen reserve the right to pull out of the partnership.

ADJOURNMENT

The Board voted to adjourn the meeting.

